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SEP 22 1976

In the Supreme Court of the United States.

OCTOBER TERM, 1976.

No. 76-265.

THE COMMONWEALTH OF MASSACHUSETTS ET AL.,
APPELLANTS,

v.

HELEN B. FEENEY,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

Motion for Leave to File Amicus Curiae Brief in Opposition to Jurisdiction, and Brief of John R. Buckley, Secretary of Administration and Finance of the Commonwealth of Massachusetts, in Opposition to Jurisdiction.

DANIEL A. TAYLOR,
Chief Legal Counsel to the Governor,
RODERICK L. IRELAND,
General Counsel,
Executive Office of Administration
and Finance,
Room 285, State House,
Boston, Massachusetts 02133.
(617) 727-2085
Attorneys for Amicus Curiae.

BATEMAN & SLADE, INC., BOSTON, MASSACHUSETTS.

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In the Supreme Court of the United States.

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Motion.

John R. Buckley, Secretary of Administration and Finance of the Commonwealth of Massachusetts, respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent to such brief of the attorneys for the appellee has been obtained, and the consent of all of the parties appellant has been obtained, which consents

are attached hereto and marked Appendix A. However, the consent of the Attorney General of Massachusetts has been refused. Having received the consent of all parties, the applicant believes that he has complied with Rule 42(1). However, should applicant be mistaken in this belief, then he respectfully urges the Court to grant its leave to the filing of the accompanying brief.

The applicant, John R. Buckley, has an interest in this case in that he is the chief fiscal and personnel officer of the Commonwealth. Mass. Gen. Laws c. 7, §§ 4, 4A. The division of personnel administration and the civil service commission, the two parties appellant, are by law under the direction, control and supervision of the applicant. Mass. Gen. Laws c. 7, § 4. Further, this motion and accompanying *amicus curiae* brief are filed with the knowledge and approval of the Governor of the Commonwealth and of the parties appellant.

The accompanying brief argues that there is no jurisdiction under 28 U.S.C. § 1253 for the Court to hear this appeal since it has been filed by the Attorney General of Massachusetts, not a party to the judgment below, without the authorization of either appellant party and contrary to their express requests that no such appeal be filed. On March 31, 1976, both parties appellant informed the Attorney General of their request that this case not be appealed. On May 27, 1976, the appellants reiterated their request that no appeal be taken. The Governor of the Commonwealth and the applicant have also both requested the Attorney General not to appeal this case. These requests are all included in a stipulation, attached hereto and marked Appendix B, signed by the Attorney General and filed with the United States District Court,

District of Massachusetts, in the matter below.[1] In a letter to the Court's clerk, dated September 1, 1976, both parties appellant acting in their own behalf pursuant to 28 U.S.C. § 1654[2] requested that the Court dismiss this appeal. A copy of such letter is attached and marked Appendix C. The Attorney General has denied every request of the parties appellant that this appeal not be taken, and the applicant therefore believes that argument on the question of jurisdiction for this appeal will be inadequate.

If the Court agrees with the argument presented in the attached brief, then it must dismiss the appeal for want of jurisdiction under 28 U.S.C. § 1253 and for noncompliance with Rule 10.

Respectfully submitted,

DANIEL A. TAYLOR,
Chief Legal Counsel to the Governor,
RODERICK L. IRELAND,
General Counsel,
Executive Office of Administration
and Finance,
Room 265, State House,
Boston, Massachusetts 02133.
(617) 727-2065
Attorneys for Amicus Curiae.

[1] At an earlier stage of the proceedings the Commonwealth of Massachusetts and the Division of Civil Service were parties defendant, but at the request of the Attorney General such parties were dropped and judgment entered in their favor by order of the District Court on March 29, 1976. *See*, Jurisdictional Statement, p. 6.

[2] "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654.

In the Supreme Court of the United States.

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Amicus Curiae Brief of John R. Buckley, Secretary of Administration and Finance of the Commonwealth of Massachusetts, in Opposition to Jurisdiction.

Interest of Amicus Curiae.

The interest of *amicus curiae* is set forth in the accompanying Motion for Leave to File Amicus Curiae Brief. In summary, John R. Buckley, as Secretary of Administration and Finance, is the chief fiscal and personnel officer of the Commonwealth, he directs, controls and supervises the activities of the officials who are parties appellant to this appeal, and he is filing this brief with the knowledge and approval of such parties and of the Governor of the Commonwealth.

Further Question Presented.

In the Attorney General's Jurisdictional Statement previously filed with this Court a single constitutional question is stated (p. 4). *Amicus curiae* believes a threshold statutory question raising the Court's jurisdiction in this appeal is also presented: Is jurisdiction for appeal conferred by 28 U.S.C. § 1253 when all of the parties appellant have expressly requested that the Attorney General of Massachusetts, not a party to the judgment below, take no appeal?

Argument.

28 U.S.C. § 1253[3] Permits Only Parties to Appeal and does Not Confer Jurisdiction for Appeals by Non-Parties Even If they have Some Interest in the Proceeding.

The record is clear beyond question that the parties appellant, in whose name the Attorney General has filed this appeal, in fact do not wish to appeal this case. As the Attorney General's own stipulation (attached as Appendix B) states, both parties appellant have not authorized and oppose this appeal (*infra*, paragraphs 2 and 10, at pp. 2a and 4a). The Attorney General did not consult with either party prior to filing the notice of appeal (*infra*, paragraphs 5 and 13, at pp. 3a and 5a-6a). Nor did he meet with either party to discuss their opposition to the appeal, or their request that a Special Assistant Attorney General represent their interests (*infra*, paragraphs 7 and 14, at pp. 3a, 4a and 5a). Further, the Governor of the Commonwealth opposes the appeal, has

[3] "Except as otherwise provided by law, any *party* may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." (Emphasis added.) 28 U.S.C. § 1253.

requested the Attorney General not to file such appeal, and has requested the appointment of a Special Assistant Attorney General to represent the parties appellant in this matter (*infra*, paragraph 17, at p. 5a). Upon the filing of a Jurisdictional Statement by the Attorney General, the parties appellant acted on their own behalf pursuant to 28 U.S.C. § 1654 to request that the Court dismiss this appeal (attached as Appendix C).

There being no appeal authorized by the parties appellant in this case, and an appeal having been taken in their name but over their express protest, the Attorney General of Massachusetts is seeking, in effect, to appeal on behalf of a *non-party* — the Commonwealth of Massachusetts.

It has been well settled law for over one hundred years that appeals in the federal courts may only be taken by parties to the judgment below. *Bayard* v. *Lombard*, 9 How. 530, 551, 13 L. Ed. 245, 254 (1850); *South Carolina* v. *Wesley*, 155 U.S. 542, 545 (1895); *United States ex rel. Louisiana* v. *Jack*, 244 U.S. 397, 402 (1917); *United States* v. *Seigel*, 168 F. 2d 143, 144 (D.C. Cir. 1948) (cases cited therein). It is equally well settled that attorneys themselves, unless they become parties, may not appeal. As the Court of Appeals held in *First Iowa Hydro Elec. Coop.* v. *Iowa-Illinois Gas & E. Co.*, 245 F. 2d 630, 631 (8th Cir. 1957), when it dismissed an unauthorized appeal by attorneys who were not parties:

> Under the Federal Rules of Civil Procedure, appeals cannot be taken from final judgments of the District Court otherwise than by parties to the judgments. Rule 73 provides that "a party may appeal from a judgment by filing with the district court a notice of appeal." The four attorneys were not parties and they neither asked nor obtained leave to become parties. We know of no appeal by non-parties.

Elsewhere that court noted: "We think the plaintiffs may not be made appellants against their will." 245 F. 2d at 632. *See, Pueblo of Santa Rosa* v. *Fall*, 273 U.S. 315 (1927); *Meredith* v. *Ionian Trader*, 279 F. 2d 471 (2d Cir. 1960). The Attorney General of Massachusetts is not a party in this case.

The courts of the United States have rigorously applied these rules and dismissed unauthorized appeals involving state agencies. Thus, in *Brown* v. *Grand Trunk Western R. Co.*, 124 F. 2d 1016 (6th Cir. 1941), the attorney general of Michigan engaged special counsel to represent the auditor general of Michigan. Without the consent and over the protest of the state officials, the special counsel sought to appeal on behalf of the auditor general. The court dismissed the appeal as unauthorized, holding that:

> [t]he general rule is that an attorney cannot, on his own motion, appeal from a judgment or decree injuriously affecting the interest of his client without said client's consent. 124 F. 2d at 1016.

Even where states have been the real parties in interest, though the actual parties to the record have been state agencies, the Court has never relaxed its rule that only the parties to the record may authorize appeals. In *Louisiana* v. *Jack*, *supra*, a state attorney general, dissatisfied with the settlement of an action in the United States District Court by a state agency which he represented, sought to intervene and appeal on behalf of the state. As an alternative holding in affirming the Court of Appeals' denial of the attorney general's petition, the Court stated:

> With exceptions not even remotely applicable to a case such as we have here it has long been the law as settled by this court that "no person can bring a writ of error (an appeal is not different) to reverse a judgment who is not a party or privy to the record," *Bayard* v. *Lombard*, 9 How. 530, 551, and in *Ex parte Tobacco Board of Trade*, 222 U.S. 578, it was announced, in a *per curiam* opinion, as a subject no longer open to discussion, that one who is not a party to a record and judgment is not entitled to appeal therefrom," and that a refusal after decree to permit new parties to a record cannot be reviewed by this court directly on appeal, or indirectly, by writ of mandamus, under circumstances such as were there and are here presented. *Id.* at 402.

Accord, South Carolina v. *Wesley, supra*, 155 U.S. 542.

The law prohibiting appeals by non-parties applies equally to the United States when its agencies have not appealed. In *Commanding Officer U.S. Army Base* v. *United States*, 207 F. 2d 499 (6th Cir. 1953), an alien successfully prosecuted a habeas corpus action against his base commander for unlawful induction. The base commander took no appeal, but the United States did. Even though the court recognized the United States to be the real party in interest, and even though the inductee had entered stipulations with the United States extending the time for filing its brief, the Circuit Court of Appeals held:

> United States of America, not being a party against whom the judgment ran, and not having intervened in the proceedings below for making itself such a party, was not authorized to take an appeal from the judgment of the District Court, and such attempted appeal was of no validity. *Id.* at 501.

Similarly in *United States* v. *Seigel*, *supra*, the Administrator of the Office of Price Administration instituted an

action from which, when dismissed, he failed to appeal. The United States, describing itself in the court's words as "the real party in interest," but without seeking to be substituted as a party, filed a notice of appeal. The Circuit Court recognized the clear interest of the United States, but nevertheless held that it had not become a party to the judgment below and therefore could not appeal from the judgment. It explained the need for orderliness of judicial administration with reasons which apply to all attempted appeals by non-parties, whether they are lodged in the name of the non-party, as in *Seigel*, or are lodged on behalf of a non-party but in the name of a party, as in the present case:

> A person who has not submitted himself to the jurisdiction of a court, and who has not presented to the court his claim of interest in the controversy, ought not to be allowed to appeal from the judgment. The slightest regard for an orderly adjudication of contesting rights dictates that conclusion. The Supreme Court, in the cases we have cited, thought this matter important. Rules of procedure such as the one here pertinent are not mere naked technicalities. As we recently had occasion to observe, reasonable adherence to clear, reasonable and known rules of procedure is essential to the administration of justice. Justice cannot be administered in chaos. Moreover, the administration of justice involves not only meticulous disposition of the conflicts in one particular case but the expeditious disposition of hundreds of cases. If the courts must stop to inquire where substantial justice on the merits lies every time a litigant refuses or fails to abide the reasonable and known rules of procedure, there will be no administration of justice. Litigants must be required to cooperate in the efficient disposition of their cases. *Id.* at 146.

Authority in the Attorney General to take this appeal in the name but over the objections of the state agency parties — in reality on behalf of the state — cannot be implied from an examination of the practice in the state courts of Massachusetts.[4] Such an argument was made and rejected in *Louisiana* v. *Jack*, *supra*:

> This claim cannot be seriously entertained in the face of the long-time perfectly settled law that equity suits in

[4] *Secretary of Administration and Finance* v. *Attorney General*, 1975 Mass. Adv. Sh. 665 (March 20, 1975), 326 N.E. 2d 334, cannot control the federal rights created by 28 U.S.C. §§ 1253 and 1654. Nor is it relevant to this case since it involved a construction of that portion of the state statute, Mass. Gen. Laws c. 12, § 3 (text set forth in full at the end of this footnote), as it applied to the Attorney General's representation of a state agency in a *state* court. That portion of the state statute which allows the Attorney General to represent the state and state officials in "any other tribunal" was not in issue before the Massachusetts Supreme Judicial Court.

Finally, even if this ruling of the Massachusetts court was considered to be directory to the Supreme Court governing federal appeals, the procedure clearly outlined by the Massachusetts court to avoid "frustrating the will of the 'supreme executive magistrate'" has not been followed. The Massachusetts court stated that:

> We note that, where there is a policy disagreement between the Attorney General and the Governor or his designee, the appropriate procedure would be for the Attorney General to appoint a special assistant to represent the Governor's interests. It is only where the Attorney General believes that there is no merit to the appeal, or where the interests of a consistent legal policy for the Commonwealth are at stake, that the Attorney General should refuse representation at all. *Id.* at 680, n. 8.

In this case, as the stipulation (Appendix B) indicates, the Attorney General has refused the request of the Governor and the parties to appoint special counsel and has not met with the parties to discuss this request. *Infra*, pp. 3a, 4a and 5a.

Mass. Gen. Laws c. 12, § 3, provides:

> The attorney general shall appear for the commonwealth and for state departments, officers and commissions in all suits and other civil

> Federal courts and the appellate procedure in them are regulated exclusively by Federal statutes and decisions, unaffected by statutes of the states. *Id.* at 403.

See also, *Cord* v. *Smith*, 338 F. 2d 516 (9th Cir. 1964), in which the court disqualified an attorney from representing a party in a diversity action and declined to follow state decisional authority to the effect that an attorney could represent a party under the circumstances presented:

> It is quite true that in this diversity action involving a contract presumably made and to be performed in California, the substantive law of California controls. But we do not think that the rule of *Erie Railroad Co.* v. *Tompkins* . . . compels the federal courts to permit, in proceedings before those courts, whatever action by an attorney-at-law may be sanctioned by the courts of the state. When an attorney appears before a federal court, he is acting as an officer of that court, and it is that court which must judge his conduct. *Id.* at 524.

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proceedings in which the commonwealth is a party or interested, or in which the official acts and doings of said departments, officers and commissions are called in question, in all the courts of the commonwealth, except upon criminal recognizances and bail bonds, and in such suits and proceedings before any other tribunal, including the prosecution of claims of the commonwealth against the United States, when requested by the governor or by the general court or either branch thereof. All such suits and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall be forthwith transmitted by them to him. All legal services required by such departments, officers, commissions and commissioners of pilots for district one in matters relating to their official duties shall, except as otherwise provided, be rendered by the attorney general or under his direction.

As was the case in *Louisiana* v. *Jack*, *supra*, and *Brown* v. *Grand Trunk Western R. Co.*, *supra*, the Attorney General of Massachusetts apparently disagrees with the decision of the state agency parties not to appeal this case.[5] But he may not bypass the requirement that appeals only be taken by parties by utilizing the device of an unauthorized appeal in the name of the parties but in fact on behalf of the state itself.

Conclusion.

Amicus curiae respectfully urges this Court to dismiss the appeal for want of jurisdiction under 28 U.S.C. § 1253 and for noncompliance with Rule 10.

Respectfully submitted,

DANIEL A. TAYLOR,
Chief Legal Counsel to the Governor,
RODERICK L. IRELAND,
General Counsel,
Executive Office of Administration
and Finance,
Room 265, State House,
Boston, Massachusetts 02133.
(617) 727-2065
Attorneys for Amicus Curiae.

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[5] The Commonwealth of Massachusetts was an original party defendant to the proceeding below. But upon motion of the Attorney General the complaint was dismissed with respect to the state. *See*, Jurisdictional Statement, p. 6.

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Appendix A.

In the Supreme Court of the United States.

OCTOBER TERM, 1976.

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v.

HELEN B. FEENEY,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.

Consent to Filing of Amicus Curiae Brief.

We hereby consent, pursuant to Rule 42 of the Supreme Court Rules, that the *amicus curiae* brief of John R. Buckley, Secretary of Administration and Finance of the Commonwealth of Massachusetts, may be filed in this proceeding with the Supreme Court of the United States.

Appellants

/s/ WALLACE H. KOUNTZE,
Personnel Administrator.

/s/ AMELIA MICLETTE,
CHAIRMAN,
Civil Service Commission.

Appellee

/s/ RICHARD P. WARD,
ROPES & GRAY,
225 Franklin Street,
Boston, Massachusetts 02110.

/s/ JOHN REINSTEIN,
Massachusetts Civil Liberties
Union Foundation,
68 Devonshire Street,
Boston, Massachusetts 02109.

Attorneys for Appellee.

Appendix B.

United States District Court
District of Massachusetts

HELEN B. FEENEY,
PLAINTIFF

v.

THE COMMONWEALTH OF MASSACHUSETTS ET AL.,
DEFENDANTS

CIVIL ACTION
No. 75-1991-T

Stipulation.

The parties in this action stipulate and agree to the following facts, without conceding the materiality or relevance thereof:

1. Wallace H. Kountze is the Personnel Administrator of the Division of Personnel Administration of the Commonwealth and a defendant in this action.

2. In his official capacity as Personnel Administrator of the Commonwealth, a defendant in this action and individually, Mr. Kountze has not authorized and opposes an appeal from the judgment of this Court to the United States Supreme Court.

3. In his official capacity as Personnel Administrator of the Commonwealth, a defendant in this action and individually, Mr. Kountze has not authorized and opposes the filing on his behalf by the Attorney General of the Notice of Appeal, the Motion for Stay of Judgment, the Motion for Relief from Judgment and the Supplementary Motion for Relief from Judgment now pending before the Court.

4. After reviewing the judgment and order of this Court entered on March 29, 1976, Mr. Kountze wrote to the Attorney General on March 31, 1976, requesting that no appeal be filed on his behalf. (A true copy of that letter is attached hereto as Exhibit A.) He has stated in an affidavit previously filed with this Court that he did not request a filing of the motion for a stay and the motion for relief from judgment.

5. Mr. Kountze was not consulted by the Attorney General prior to the filing of the documents referred to in paragraph 3, above, nor was Mr. Kountze at any time consulted by the Attorney General concerning the effect that the granting or denial of any of these motions would have on the administration of the civil service system of the Commonwealth. Counsel for the Division of Public Administration has consulted with the office of the Attorney General on these matters and has informed that office that the granting of these motions would cause some difficulty in the administration of the civil service system.

6. In a letter dated May 27, 1976 from Amelia Miclette, Chairperson of the Civil Service Commission to the Attorney General, the Attorney General was asked to appoint a Special Assistant Attorney General to represent Mr. Kountze and the members of the Civil Service Commission in all further proceedings in this action. (A true copy of this letter is attached hereto as Exhibit B.)

7. The Attorney General has not met with Mr. Kountze personally to discuss his opposition to a stay and to an appeal,

or his reasons therefor, or to discuss his request that his interests be represented by a Special Assistant Attorney General.

8. Given the Attorney General's filing of the Notice of Appeal and the motions described in paragraph 3 over Mr. Kountze's objection, Mr. Kountze wishes to be represented by a Special Assistant Attorney General in all further proceedings in this action.

9. The individual members of the Civil Service Commission in their official capacities as members of the Commission and as they collectively comprise the Commission are defendants in this action.

10. The members of the Civil Service Commission in their official capacities, as they comprise the Commission, and as defendants in this action, have not authorized and oppose an appeal from the judgment of this court to the United States Supreme Court.

11. The members of the Civil Service Commission, in their official capacities, as they comprise the Commission, and as defendants in this action, have not authorized and oppose the filing on their behalf by the Attorney General of the Notice of Appeal, the Motion for Stay of Judgment, the Motion for Relief from Judgment and the Supplemental Motion for Relief from Judgment.

12. After reviewing the judgment and order of this Court entered on March 29, 1976, the Civil Service Commission voted on March 31, 1976 to request the Attorney General not to appeal on behalf of the Civil Service Commission and its individual members. The Attorney General was informed of this request by letter dated March 31, 1976 from Amelia L. Miclette, Chairperson of the Civil Service Commission. (A true copy of this letter is attached hereto as Exhibit C.)

13. None of the defendant members of the Civil Service Commission were personally consulted by the Attorney General after May 25, 1976 concerning any of the matters which are now pending before the Court.

14. As of June 21, 1976, the Attorney General had not met with the members of the Civil Service Commission to discuss their opposition to a stay and to an appeal, or their reasons therefor, or to discuss their request that their interests be represented by a Special Assistant Attorney General.

15. Given the Attorney General's filing of the Notice of Appeal and the motions described in paragraph 11 over their objection, the members of the Civil Service Commission wish to be represented by a Special Assistant Attorney General in all further proceedings in this action.

16. The documents, attached hereto, marked "A," "B," "C," and "D" are true copies of letters to the Attorney General from and on behalf of the defendants set forth therein.

17. The Governor of the Commonwealth of Massachusetts is Michael S. Dukakis. The Governor in his official capacity as the chief executive officer of the Commonwealth opposes the filing of an appeal from the judgment of the Court in this action and the motion for a stay and the various other motions filed by the Attorney General on behalf of the defendants who are officials of the executive branch of government of the Commonwealth. The basis for the Governor's opposition is that such actions are not in the interests of the defendants or the Commonwealth and its citizens or otherwise in the public interest. The Governor has requested the Attorney General not to file an appeal on behalf of the defendants and, through his counsel, not to seek a stay, reconsideration or modification of the Court's judgment and order. On June 21, 1976, the Governor, through his counsel, requested the Attorney General to appoint a Special Assistant Attorney General to represent the defendants in all further proceedings in this action.

18. The list of persons constituting a list of eligible persons certified for appointment to the fire department of Boston has

since May 28, 1976 been supplemented by the names of additional eligibles. There is at least one woman who is eligible for appointment to the Boston Fire Department who has not yet been certified to the appointing authority but who in the opinion of Wallace H. Kountze, the Personnel Administrator will be at some time in the future certified for appointment.

19. In the opinion of Wallace H. Kountze, the Personnel Administrator for the Commonwealth, no confusion or difficulty in the administration of the Division of Personnel Administration of the Commonwealth has resulted from compliance with the Court's order heretofore entered in this action.

THE PLAINTIFF

By her attorney,

/s/ JOHN REINSTEIN
68 Devonshire Street
Boston, Massachusetts 02109

THE DEFENDANTS

By Francis X. Bellotti,
Attorney General

/s/ THOMAS R. KILEY
Assistant Attorney General
One Ashburton Place
Boston, Massachusetts 02108

June 21, 1976

Exhibit "A."

The Commonwealth of Massachusetts

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
One Ashburton Place, Boston 02108

March 31, 1976

Honorable Francis X. Bellotti
Attorney General
Room 373
State House
Boston, Massachusetts 02133

Dear Attorney General Bellotti:

As the Personnel Administrator of the Commonwealth, the statutory successor to the Director of Civil Service (c. 835 of the Acts of 1974), I have read the opinion and order in the Veterans' Preference cases (*Anthony* v. *Commonwealth*; *Feeney* v. *Commonwealth*) and it is my opinion that the matter should not be appealed to the Supreme Court of the United States. Accordingly, I request that you, as my legal representative pursuant to M. G. L. c. 12 s. 3, not file an appeal on my behalf.

Sincerely,

/s/ WALLACE H. KOUNTZE
Personnel Administrator.

Exhibit "B."

The Commonwealth of Massachusetts

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
One Ashburton Place, Boston, Ma. 02108

May 27, 1976

Attorney General Francis X. Bellotti
Office of the Attorney General
20th Floor, One Ashburton Pl.
Boston, Mass. 02108

Re: Helen B. Feeney, Plaintiff
v.
The Commonwealth of Massachusetts, Et Al, Defendants

Dear General Bellotti:

I write you on behalf of the members of the Civil Service Commission and the Administrator of the Division of Personnel Administration, Wallace H. Kountze, all defendants in the above captioned matter.

We have been advised that your office has undertaken steps to seek a stay of judgment in this case in the United States District Court for the District of Massachusetts as well as to appeal the matter to the United States Supreme Court. While we recognize your legal right to take these actions, we nevertheless remain opposed to both the stay and the appeal. Therefore, we strongly believe that we are in need of legal

counsel to represent our interests and a formal request is hereby made for the appointment of a Special Assistant Attorney General to act as our Counsel in these proceedings.

The matter is of such grave concern and importance to us, and our need for counsel is so pressing, that we seek the opportunity to meet with you as soon as possible to discuss the ramifications of our position.

We await hearing from you in this regard at the earliest possible time.

Very truly yours,

/s/ AMELIA L. MICLETTE,
CHAIRPERSON,
Civil Service Commission

CC: Wallace H. Kountze, Personnel Administrator

Exhibit "C."

The Commonwealth of Massachusetts.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
One Ashburton Place, Boston, Ma. 02108

March 31, 1976

Francis X. Bellotti
Attorney General
Office of the Attorney General
State House, Room 373
Boston, Massachusetts 02133

RE: Carol A. Anthony, et al.

v.

The Commonwealth of
Massachusetts, et al.

Helen B. Feeney

v.

The Commonwealth of
Massachusetts, et al.

Dear Attorney General Bellotti:

At its meeting of March 31, 1976, the Civil Service Commission voted that:

1) The Commission recognizes and appreciates the interest of individual veterans, their associations, and their representatives in having the above named decision appealed to a higher court. However, the Commission is unwilling to be a party to such an appeal.
2) The Commission believes that the most appropriate course of action at the present time is for the legislature to enact an alternative procedure to provide preference for veterans along the line spelled out in the decision of the federal court.
3) Accordingly, the Commission requests the Attorney General that no appeal be made in this matter in the name of the Civil Service Commission and its individual members.

Should you decide to pursue further the matter of the appeal, the Commission would respectfully request the opportunity to meet with you in order to share its view in this regard.

Sincerely,

/s/ AMELIA L. MICLETTE,
CHAIRPERSON,
Civil Service Commission

CC: Secretary John R. Buckley

Wallace H. Kountze
Personnel Administrator

Exhibit "D."

The Commonwealth of Massachusetts

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
State House, Boston 02133

March 31, 1976

The Honorable Francis X. Bellotti
Attorney General of the Commonwealth
John W. McCormack Building
One Ashburton Place
Boston, Massachusetts 02108

Dear Attorney General Bellotti:

I have reviewed the opinion and order of the Court in the cases of *Anthony et al* v. *Commonwealth of Massachusetts et al* (CA 74-5061-T) and *Feeney* v. *Commonwealth of Massachusetts et al* (CA 75-1991-T), the so-called Veterans' Preference cases, and have concluded that the matter does not merit further judicial review. Accordingly, I would support the requests of both the Personnel Administrator and the Civil Service Commission, forwarded to you herewith, that you not appeal this case to the Supreme Court of the United States.

I am aware that the decision to enjoin utilization of Veterans' Preference has an impact on the state's personnel system which I have the ultimate responsibility of overseeing. The delay and uncertainty caused by an appeal might well

complicate administration of that system. Accordingly, my office has already begun to work with the Legislature to formulate legislation which would further the legitimate governmental interest of rewarding veterans while not working to the permanent and absolute disadvantage of the women of the Commonwealth.

Sincerely yours,

/s/ JOHN R. BUCKLEY, SECRETARY

Appendix C.

The Commonwealth of Massachusetts

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
One Ashburton Place, Boston 02108

September 1, 1976

Michael Rodak, Jr., Esquire
Clerk of the United States Supreme Court
Washington, D.C. 20543

Re: Commonwealth of Massachusetts et al v.
Helen B. Feeney, October Term, 1976,
No. 76,265

Dear Sir:

We are named as the only two parties appellant in the above appeal, notice of which was filed on May 25, 1976, by the Attorney General of Massachusetts. We wish to bring to the Court's attention that while this appeal has been filed on our behalf as the sole parties appellant, the appeal is without our authorization. (At an earlier stage of the proceedings the state of Massachusetts and the Division of Civil Service were parties defendant, but at the request of the Attorney General such parties were dropped and judgment entered in their favor by order of the three judge panel on March 29, 1976.)

On March 31, 1976, each of us informed the Attorney General of our request that this matter not be appealed. On May

27, 1976 we reiterated our desire that no appeal be taken. All of these letters are appended to a Stipulation (copy enclosed), dated June 21, 1976, filed with the United States District Court, District of Massachusetts in the matter appealed from, Civil Action No. 75-1991-T.

Said appeal was nevertheless filed and perfected with the filing of a jurisdictional statement on August 23, 1976, all without our consent and contrary to our express requests.

Therefore, pursuant to 28 USC Section 1654, and acting in our own behalf as all of the parties appellant to this appeal, we request that the Court dismiss the appeal.

Respectfully submitted,

WALLACE H. KOUNTZE
Personnel Administrator

AMELIA MICLETTE,
CHAIRMAN
Civil Service Commission

cc: Michael S. Dukakis
Governor
Francis X. Bellotti
Attorney General
John R. Buckley
Secretary of Administration & Finance
Richard P. Ward
Counsel to Plaintiff-Appellee